



STATE OF DELAWARE

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MEMORANDUM

TO: The Chair and Commissioners

FROM: Lisa B. Driggins, Public Utilities Analyst

ABD

DATE: November 2, 2016

SUBJECT: IN THE MATTER OF THE PROPOSED REVOCATION OF THE CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY TO PROVIDE WASTEWATER SERVICES PREVIOUSLY ISSUED TO OAK CREST FARMS, INC.
(OPENED NOVEMBER 1, 2016) PSC DOCKET NO. 16-1029

On November 23, 2004, the Delaware Public Service Commission (the "Commission") granted Oak Crest Farms, Inc. ("Oak Crest" or "Company") a Certificate of Public Convenience and Necessity ("CPCN") to provide wastewater services by PSC Order No. 6520 in PSC Docket No. 04-WW-005.

Oak Crest last filed an annual report and paid its assessment to the Commission in 2011. Since that time Staff has been unable to locate Oak Crest for its annual audit of the Company. Staff recently learned that in 2010/2011 Oak Crest transferred the wastewater facilities and operations within the area covered by the wastewater CPCN issued in 04-WW-005 to the Oak Crest Farms Property Owners Association (the "Association") and the Association has been operating the system since that time. 26 Del. C. §203A(d)(2) states, in part, that no public utility shall abandon or discontinue, in whole or in part, any regulated public utility business, operations or services provided under a certificate of public convenience and necessity or otherwise which are subject to jurisdiction of the Commission without first having received Commission approval for such abandonment or discontinuance. In addition, as part of its application, (PSC Docket No. 16-0937), for a CPCN to provide wastewater services within the Oak Crest Development, the Association asserts that Oak Crest "went bankrupt."

On July 28, 2016 Staff sent, via certified mail to the last known address of the Company a letter requesting that a representative contact the Commission and advising the Company that if the Commission had not heard from the Company the Commission would move to revoke the CPCN issued to Oak Crest. On October 21, 2016, Staff sent a certified letter to The Company Corporation, which is the listed registered agent for the Company, in hopes they could assist with locating Oak Crest Farms, Inc. The Commission has received no response to these certified

letters. In addition, Staff attempted to contact the Company via phone on several occasions and at various phone numbers that Staff had learned might be associated with the Company and its representatives. Finally, Staff has been unsuccessful in its attempts to contact the Company.

As allowed by 26 *Del. C.* §203D(j)(2), (3) and (4) and the Commission's Regulations Governing Certificates of Public Convenience and Necessity for Water Utilities, 26 *Del. Admin. C.* §6001 (the "Regulations"), the Commission may, for good cause, undertake to suspend or revoke a certificate of public Convenience and necessity held by a wastewater utility. Good cause shall consist of:

1. A finding made by the Commission of material noncompliance by the holder of the certificate with any provisions of Title 7, 16 or 26 dealing with the provision of wastewater services to customers, or any order or rule of the Commission relating to the same; or
2. A finding by the Commission that the wastewater utility has failed in a material manner to provide adequate or safe wastewater service to customers as evidenced by inadequate customer service, insufficient investment in, or inadequate operation of, the system or otherwise; and
3. A finding by the Commission that, to the extent practicable, service to customers will remain uninterrupted under an alternative wastewater utility or a designated third party capable of providing adequate wastewater service; and,
4. A finding by the Commission that to the extent practicable, any financial consequences to customers served by the utility subject to a revocation are appropriately mitigated.

Given the fact that the Company appears to have abandoned its CPCN without Commission approval and may be financially insolvent, Staff recommends that the Commission find that Oak Crest is in material noncompliance with Title 26 dealing with the provision of wastewater services to its customers, that the Company has failed in a material manner to provide adequate or safe wastewater service to its customers as evidenced by inadequate customer service and inadequate operation of the wastewater system, and that the Company has failed to pay its annual assessments and file its financial reports. Staff further recommends that the Commission find that since the Association is currently operating the wastewater system, service to the customers in the Oak Crest Farms development will remain uninterrupted under an alternative wastewater utility capable of providing adequate wastewater service.¹ Staff also recommends that the Commission find that to the extent practicable, any financial consequences to customers served by Oak Crest are appropriately mitigated since the system was transferred to the Association and the rates charged will be regulated by the Commission². Staff recommends

¹ Oak Crest Farms Property Owners Association has applied for a CPCN to provide wastewater service within the Oak Crest Farms development; see PSC Docket 16-0937.

² The Association will also need to obtain Commission approval of its rates and tariff.

that the Commission make the above findings, find that revocation of the CPCN is reasonable and necessary because Staff understands that Oak Crest is bankrupt, abandoned service without Commission approval, and transferred the wastewater facilities and operations to the Association and the Association has been operating the wastewater system and plant since 2010/2011, and revoke wastewater CPCN, 04-WW-005, issued to Oak Crest Farms, Inc. in PSC Order No. 6520.